

November 12, 2004

**VIA ELECTRONIC FILING**

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
12<sup>th</sup> Street Lobby, TW-A325  
Washington, D.C. 20554

Re: *Ex Parte Presentation*  
CG Docket No. 04-208

Dear Ms. Dortch:

On Wednesday, November 10, 2004, Christopher Day, Leonard Kennedy, Kent Nakamura and Michael Raymond of Nextel Communications, Inc. and Christopher J. Wright of Harris, Wiltshire & Grannis LLP met with Sheryl J. Wilkerson, Legal Advisor to Chairman Michael Powell. During the meeting, the Nextel representatives discussed concerns regarding the March 30, 2004, National Association of State Utility Consumer Advocates' ("NASUCA") Petition for Declaratory Ruling ("NASUCA Petition"), which seeks certain restrictions on the ability of telecommunications providers to price and market their services.

Specifically, Nextel expressed its concern that various actions currently pending before state public utility commissions and in the courts could lead to state regulation of Commercial Mobile Radio Service ("CMRS") rate structures – a result wholly at odds with the Commission's 1994 decision to deregulate CMRS rates and rate structures as a matter of federal policy. Therefore, Nextel noted the need for swift Commission action to halt state activities to regulate CMRS rates and rate structures, and preserve the benefits of the deregulatory, federal framework for CMRS.

At the outset, Nextel noted that it has taken a national approach to the provision of CMRS services, particularly billing and customer service issues. Numerous sales and customer service issues that were previously handled in various field offices are now handled in a centralized environment. This centralized approach has substantially improved Nextel's business economies and efficiencies. More importantly, by centralizing its business policies and systems, Nextel has substantially improved the overall customer experience. This high level of customer satisfaction has been reflected in a number of customer surveys, as well as Nextel's very low complaint rate at both the Commission and state regulatory agencies. In addition, Nextel noted that it continually researches new methods to improve the readability and clarity of its bills, and plans to phase-in improved bills on a national level soon.

However, a recent proliferation of disparate state laws, regulations and lawsuits seeking to govern CMRS providers' billing practices threatens to undermine the seamless, national offerings of CMRS providers, such as Nextel, to the ultimate detriment of the public. Nextel noted that the California Public Utilities Commission ("CPUC") recently approved a package of customer service and billing rules (the "CPUC Consumer Bill of Rights") that imposes lengthy, onerous and potentially confusing requirements on CMRS providers. The State of Minnesota has also recently passed legislation that seeks to govern CMRS rates, rate elements and contract terms. Furthermore, a number of class action suits against CMRS providers are also effectively seeking to impose new state regulation on CMRS rates and rate elements.<sup>1</sup>

In order to prevent the Balkanization of the CMRS market to the detriment of the public, Nextel urged the Commission to take action to ensure that regulation of CMRS remains primarily on the federal level. As an initial matter, Nextel urged the Commission to reaffirm its jurisdiction over CMRS rates and rate structures and stop states from imposing potentially conflicting rate and rate structure regulation while the Commission studies the matter. Going forward, Nextel urged the Commission to take the same general approach to CMRS regulation as that delineated in the Commission's recent Vonage Holdings Corp. IP-enabled telephony decision<sup>2</sup> by regulating CMRS with a light regulatory touch at the federal level pursuant to the Commission's existing authority under Section 332 of the Communications Act.

Finally, the Nextel representatives discussed the need for the Commission's Office of General Counsel to intervene on behalf of CMRS carriers as *amicus curiae* in court cases involving challenges to early termination fees ("ETF") under state law. Nextel noted that ETFs are clearly part of a CMRS carrier's rate structure because they allow carriers to spread out up-front costs, such as handset equipment, over the life of a contract. Accordingly, ETFs fall squarely within the confines of the Commission's jurisdiction under Section 332, and should be dealt with on the federal level.

---

<sup>1</sup> See, e.g., *In re Cellphone Termination Fee Cases*, J.C.C.P. 4332 (Alameda Cty., CA Super. Ct.).

<sup>2</sup> See News, *FCC Finds That Vonage Not Subject to Patchwork of State Regulations Governing Telephone Companies*, FCC 04-267 (rel. Nov. 9, 2004).

Ms. Marlene H. Dortch  
November 12, 2004  
Page 3

Pursuant to Section 1.1206(b)(2) of the Commission's rules, this letter is being filed electronically for inclusion in the public record of the above-referenced proceeding. Should you have any questions regarding this filing, please do not hesitate to contact the undersigned.

Respectfully submitted,

/s/ Christopher R. Day  
Christopher R. Day  
Counsel, Government Affairs

cc: Sheryl J. Wilkerson